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2018 IL App (3d) 160361-U

Order filed October 1, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois.
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-16-0361
	)	Circuit No. 15-CM-1906
CHRISTOPHER NAJERA,	)	
Defendant-Appellant.	)	Honorable Edward A. Burmila Jr., Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Presiding Justice Carter and Justice Lytton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State presented sufficient evidence to prove beyond a reasonable doubt that defendant committed the offenses of domestic battery.

¶ 2 Defendant, Christopher Najera, appeals his convictions for domestic battery arguing that the State presented insufficient evidence to prove his guilt beyond a reasonable doubt. We affirm.

¶ 3 **FACTS**

¶ 4 The State charged defendant with three counts of domestic battery (720 ILCS 5/12-3.2(a)(2)( West 2014)). The three counts alleged that defendant committed domestic battery by (1) grabbing the victim, (2) striking the victim, and (3) pulling the victim’s hair. The cause proceeded to a bench trial.

¶ 5 The victim, Michelle Lopez, and defendant are married. She testified that on the day in question, she and defendant engaged in a verbal argument outside their home. Lopez told defendant that she wanted to walk to her mother’s home to get a ride to work. Lopez testified that she and defendant were arguing about money problems, but Lopez acknowledged that she later told police that they were arguing because defendant accused her of cheating on him. During the argument, defendant hugged her, told her that he loved her and said that he did not want to fight. According to Lopez, the hug was the only physical contact she had with defendant during the argument. Lopez did not feel threatened, insulted, or in fear for her safety during the argument.

¶ 6 David Halstead testified that he observed defendant giving Lopez a “bear hug” as he drove to work. Halstead stopped his vehicle and rolled down his window. Defendant and Halstead then got into an argument and Lopez continued to walk away from the area. Halstead told defendant to keep his hands off Lopez. After the argument between defendant and Halstead, defendant caught up with Lopez and continued to walk alongside her.

¶ 7 Around the same time, Adam Sampson approached Halstead in his own vehicle. Halstead and Sampson both discussed what Halstead had seen. Halstead did not observe any other interaction with the couple after his discussion with Sampson. Halstead then left for work, leaving Sampson to watch the couple.

¶ 8 Sampson testified that Halstead told him that he had observed the couple “get into it” and asked Sampson to watch the couple in case defendant “started hitting her again.” Sampson followed defendant and Lopez and heard defendant yelling at Lopez. Sampson saw defendant push Lopez with two hands, which caused Lopez to fall to the ground. Sampson saw Lopez try to get away, but defendant grabbed her by the hair and pulled her back. Sampson called the police.

¶ 9 Sampson acknowledged during his testimony that the incident occurred so long ago that he did not remember every detail. Later in Sampson’s testimony, he stated that Lopez attempted to cross the street, but defendant grabbed her by her hair and pulled her back. A written statement that Sampson provided to the police after the incident refreshed his memory. With his memory refreshed, Sampson testified that in addition to what he had already testified to, he had observed defendant hit Lopez below her neck, in the chest area. Sampson also remembered that defendant kicked Lopez when she was down on the ground trying to get away from defendant.

¶ 10 On cross-examination, Sampson explained that he called the police once he observed defendant put his hands on Lopez. Sampson again acknowledged that he did not recall every detail of the incident because he was driving while it occurred, so he was not able to watch everything that happened between the couple.

¶ 11 Officer Kendall Schumann responded to Sampson’s call. When Schumann arrived, he saw the couple walking. The couple was engaged in a verbal altercation, and Schumann had not observed any physical contact between the couple. Schumann separated the couple and spoke with defendant. Defendant stated that he and Lopez were in a verbal altercation because Lopez was upset that her vehicle had broken down. Schumann also spoke with Lopez, who told him that the argument between the couple was strictly verbal and Lopez did not want to file a complaint against defendant. However, Schumann ultimately arrested defendant after speaking

with Sampson and Halstead, who told Schumann that they observed the couple engaged in a physical altercation.

¶ 12 Officer Brigitte Balcer also responded to Sampson’s call, and observed Lopez upset and crying. Lopez told Balcer that the interaction between her and defendant was purely verbal. Lopez also told Balcer that the argument was based on defendant’s accusation that she was cheating on him. According to Balcer, neither defendant nor Lopez cooperated with the investigation.

¶ 13 Following the close of the State’s evidence, defense counsel made a motion for a directed verdict. The court granted the motion as to the first charge of domestic battery—grabbing Lopez. In granting the motion, the court credited Lopez’s innocent explanation of the “bear hug,” but declined to find the rest of Lopez’s testimony credible. The court, however, denied the defense’s motion as to the remaining charges. As a result, the court found defendant guilty of the two remaining counts of domestic battery—striking Lopez and pulling Lopez by the hair. The court found Sampson credible as to his testimony that he observed defendant push Lopez down and pull her by her hair. The court found that Lopez likely testified to help “ameliorate” the incident in question and work toward restoring her marriage with defendant. Ultimately, the court sentenced defendant to an 18-month term of conditional discharge.

¶ 14 ANALYSIS

¶ 15 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of domestic battery. Upon review, we find a reasonable trier of fact, viewing the evidence in the light most favorable to the State, could have found that defendant committed two acts of domestic battery by striking Lopez and pulling her by the hair.

¶ 16 In a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Instead, “ ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under this standard, we will not substitute our judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We afford great deference to the determinations of the trier of fact, and we draw all reasonable inferences from the record in favor of the State. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). “[I]n a bench trial, it is for the trial judge, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The testimony of a single witness is sufficient to sustain a conviction if it is positive and credible. *People v. Gray*, 2017 IL 120958, ¶ 36. We “will not reverse a conviction simply because the evidence is contradictory [citation] or because the defendant claims that a witness was not credible.” *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 17 To prove defendant committed the offense of domestic battery, the State must establish that defendant knowingly without legal justification by any means made physical contact of an insulting or provoking nature with any family or household member. 720 ILCS 5/12-3.2(a)(2) (West 2014).

¶ 18 Here, Sampson testified that he observed defendant push Lopez to the ground and hit her in the chest. Sampson saw Lopez try to get away, but defendant grabbed Lopez by her hair to prevent Lopez from leaving. Sampson also recalled seeing defendant kick Lopez while she was on the ground attempting to get away. This testimony alone, if credible, is sufficient to find

defendant guilty of both charges of domestic battery (striking Lopez and pulling Lopez’s hair). Significantly, the court found Sampson to be a credible witness.

¶ 19 Defendant challenges this credibility finding by arguing that Sampson “alleged new, additional acts of violence each time he told his story at trial.” Defendant notes that Sampson first alleged that defendant pushed Lopez twice, hit her once, and grabbed her hair. Defendant then notes that Sampson later testified that he saw defendant drag and jerk Lopez across the street by her hair and that defendant hit Lopez more than once. Third, defendant notes that Sampson later testified that defendant “threw” Lopez to the ground. These minor inconsistencies, however, do not negate the fact that Sampson consistently stated both prior to and during trial that defendant hit Lopez and pulled her by her hair. See *People v. Koch*, 248 Ill. App. 3d 584, 598 (1993) (noting that inconsistent statements do not necessarily invalidate a witness’s testimony).

¶ 20 We acknowledge that Lopez denied that defendant ever engaged in a physical altercation. However, the trier of fact reasonably attributed this denial to the fact that Lopez would want to protect her husband—as they remained married even at defendant’s trial. On the other hand, Sampson was an unbiased witness who did not know defendant or his wife. As the trier of fact, it was the court’s function to assess Lopez’s testimony and to resolve conflicts or inconsistencies in the evidence. *People v. Evans*, 209 Ill. 2d 194, 211 (2004). The trier of fact found Sampson credible regardless of any minor inconsistencies in his testimony. We will not substitute our judgment on questions involving the credibility of a witness. *People v. Downin*, 357 Ill. App. 3d 193, 202 (2005).

¶ 21 Finally, defendant calls our attention to the following: (1) the lack of physical evidence of injury to Lopez; (2) the lack of evidence of violence observed by the responding officers; (3) the

timeline Sampson provided in his testimony; (4) the vagueness of Sampson's testimony and lack of physical corroboration; (5) the unlikelihood that defendant would commit domestic battery in broad daylight while he was being watched; and (6) the fact that Lopez never called for help or ran away. However, none of the above points call into question Sampson's consistent testimony that he saw defendant hit Lopez and pull her hair. Rather, defendant's arguments are nothing more than an attempt to reweigh the evidence. This we will not do. See *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 22

#### CONCLUSION

¶ 23

For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 24

Affirmed.